EXHIBIT B

Declaration of Joenne McGerr

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

STATE OF IOWA, *et al.*, Plaintiffs, v. COUNCIL ON ENVIRONMENTAL QUALITY, and BRENDA MALLORY, in her official capacity as Chair, Defendants, ALASKA COMMUNITY ACTION ON TOXICS; CENTER FOR BIOLOGICAL DIVERSITY; CENTER FOR ENVIRONMENTAL HEALTH; CENTER FOR FOOD SAFETY; ENVIRONMENTAL LAW AND POLICY CENTER; ENVIRONMENTAL PROTECTION INFORMATION CENTER; FOOD & WATER WATCH; FORT BERTHOLD POWER; FRIENDS OF THE EARTH; GREEN LATINOS; LABOR COUNCIL ON LATIN AMERICAN ADVANCEMENT; MĀLAMA MĀKUA; NATIONAL PARKS CONSERVATION ASSOCIATION; NATIONAL WILDLIFE FEDERATION; OCEAN CONSERVANCY; PEOPLE'S COLLECTIVE FOR ENVIRONMENTAL JUSTICE; RIO GRANDE INTERNATIONAL STUDY CENTER; SOUTHERN UTAH WILDERNESS ALLIANCE; WE ACT FOR ENVIRONMENTAL JUSTICE; THE WILDERNESS SOCIETY, and WINTER WILDLANDS ALLIANCE, Intervenor-Defendants.	NO. 1:24-cv-00089-DMT-CRH **DECLARATION OF JOENNE MCGERR IN SUPPORT OF STATE INTERVENORS' CROSS-MOTION FOR SUMMARY JUDGMENT**

I, Joenne McGerr, hereby declare as follows:

1. I submit this declaration in support of the State of Washington's standing to defend the final rule of the Council on Environmental Quality, entitled *National Environmental Policy Act Implementing Regulations Revisions Phase 2*, 89 Fed. Reg. 35442 (May 1, 2024) ("Final Rule") . I make this declaration of my own personal knowledge, unless otherwise indicated.

2. I am now and at all times mentioned have been a citizen of the United States and a resident of the state of Washington, over the age of 18 years, competent to make this declaration, and I make this declaration from my own personal knowledge and judgment. I submit this declaration in opposition to motions to vacate the Final Rule.

3. I am currently employed by the Washington State Department of Ecology as the manager of the Shorelands and Environmental Assistance Program. As the program manager, I have overseen the work of the program throughout the state of Washington for the past 3 years and 9 months. Ecology's Shorelands and Environmental Assistance Program's mission is to create community conservation partnerships to protect and restore our shorelands, wetlands, and floodplains; including responsibility for protecting shorelines in partnership with local governments, supporting communities and Tribes in identifying and implementing practical responses to sea level rise and related coastal hazards, providing support to flood-prone communities on flood hazard reduction and regulations, protecting and restoring wetlands, and improving and coordinating the siting process for clean energy projects. The Program also administers and implements the State Environmental Policy Act ("SEPA"), which affects projects throughout the state, but particularly in coastal, shoreline, and floodplain areas.

4. As part of my work as the manager of the Shorelands and Environmental Assistance Program, I have been involved in numerous efforts to deal with harms of climate change in the state of Washington, including planning for coastal resilience, mapping coastal hazards, addressing sea level rise in shoreline planning and protection,

assessing climate mitigation and resilience for projects under SEPA, and providing grants and assistance to local communicates to support reduction of flood risks in Washington.

5. Washington is a coastal state, a mountain state, and a forest state, home to 7.9 million people[1] and 3,375 different plant and animal species.[2] Climate change will significantly adversely affect each of these signature features of Washington, in addition to the industries that support the state's economy. Climate change will also cause significant harm to the health of Washington's ecosystems and public health, with a disproportionate impact on overburdened and historically marginalized communities.

6. Washington's coasts and waterways will be significantly harmed by the impacts of climate change. Approximately 4.3 million Washingtonians live in the area around Puget Sound. Climate change will cause the sea level to rise and permanently inundate low-lying areas in the Puget Sound region.[3] Under intermediate projections, sea level is predicted to rise in Seattle relative to 2000 levels by 0.74 feet by 2050 and 2.92 feet by 2100.[4] Sea level rise will increase the frequency of coastal flood events.[5] For example, with 2 feet of sea level rise (predicted for Seattle), a 1-in-100 year flood event will become an annual event.[6] Sea level rise will also cause coastal bluffs (the location of many family homes in Puget Sound) to erode and recede by as much as 75-100 feet by

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[1] Office of Financial Management, Washington Data & Research: Total Population and Percent Change, https://ofm.wa.gov/washington-data-research/statewide-data/washington-trends/population-changes/total-population-and-percent-change (last visited May 30, 2024).

[2] The Nature Conservancy, *State of the Union: Ranking America's Biodiversity*, at 12 (Apr. 2002), https://www.natureserve.org/sites/default/files/stateofunions.pdf.

[3] Climate Impacts Group, University of Washington, *State of Knowledge: Climate Change in Puget Sound* at 4-1 (Nov. 2015) (hereinafter "*2015 State of Knowledge, Puget Sound*"), https://data.cig.uw.edu/picea/mauger/ps-sok/PS-SoK_2015.pdf.

[4] NASA, Interagency Sea Level Rise Scenario Tool – NASA Sea Level Change Portal, https://sealevel.nasa.gov/task-force-scenario-tool (last visited June 5, 2024).

[5] *2015 State of Knowledge, Puget Sound*, *supra,* n.3 at 4-6.

[6] *Id.*

2100 relative to 2000.[7] This would be a doubling, on average, of the rate of recession in 2015.[8] This erosion is not only depleting an important natural resource for biodiversity conservation (coastal bluffs),[9] but is also reducing and degrading tribal lands.[10] Many Tribes live in Washington's coastal areas and some of them are already being forced to move settlements inland. Sea level rise will also result in reduced harvest for commercial fishing and shellfish operations.[11]

7. Climate change is also causing ocean acidification, through the absorption in the ocean of excess carbon dioxide from the atmosphere. As a result, ocean waters on the outer coast of Washington and the Puget Sound have become 10-40% more acidic since 1800.[12] This increased acidity is already affecting some shellfish species. Washington has the largest shellfish industry on the west coast, contributing $270 million per year to Washington's economy and employing 3,200 workers.[13] Under a business as usual greenhouse gas scenario, ocean waters are expected to become at least 100% more acidic by 2100 relative to 1986-2005.[14] The predicted level of ocean acidification is expected to cause a 34% decline in shellfish survival by 2100.[15]

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[7] *Id*. at 4-6, 4-7.

[8] *Id.* at 4-7.

[9] Christopher B. Chappell, Washington Department of Natural Resources, *Plant Associations of Balds and Bluffs of Western Washington*, at 4-5 (June 2006), https://file.dnr.wa.gov/publications/amp_nh_balds_bluffs.pdf.

[10] Christopher Flavelle & Kalen Goodluck, *Dispossessed, Again: Climate Change Hits Native Americans Especially Hard*, The New York Times (June 27, 2021), https://www.nytimes.com/2021/06/27/climate/climate-Native-Americans.html.

[11] *Id*.

[12] Climate Impacts Group, University of Washington, *State of Knowledge Report*, *Climate Change Impacts and Adaptation in Washington State: Technical Summaries for Decision Makers*, at 2-6 (December 2013) (hereinafter "*2013 State of Knowledge Report*"), , https://cig.uw.edu/wp-content/uploads/sites/2/2020/12/snoveretalsok816.pdf.

[13] NOAA, *From the Tides of Puget Sound to Your Plate*: *Northwest Shellfish Industry Provides Important Ecological &Economic Value*, (Jan. 2012), https://media.fisheries.noaa.gov/dam-migration/noaa_shellfish_initiative_f_sheet_011312.pdf.

[14] *2013 State of Knowledge Report*, *supra*, n.12 at ES-2.

[15] *Id.* at 8-4.

8. Salmon recovery is an important initiative in Washington because the fish that formerly supported both industry and tribal communities are now subsisting at only 5% of historic population highs.[16] The Washington State Department of Transportation is under a court order to remove hundreds of fish barriers in the state's streams to restore salmon habitat, at a cost of billions of dollars. Yet the decrease in summer stream flows combined with higher stream temperatures will result in stream temperatures too high to support adult salmon,[17] and high emissions projections indicate there will be a 22% reduction in Washington salmon habitat.[18] The reduction in salmon habitat has already caused a $4.2 billion loss (in 2023 dollars) in the fishing industry.[19] The fish kills directly resulting from higher temperatures have consequences for years after temperature spikes.[20] Higher temperatures also increase the number of salmon predators, which further compromises salmon recovery efforts.[21]

9. Wildland fires pose another threat to Washington's forests. Under a business as usual greenhouse gas scenario, decreases in summer precipitation, increases in summer temperatures and earlier snow melt are predicted to result in up to a 300% increase in the area in eastern Washington burned annually by forest fires[22] and up to a 1,000% increase in area burned annually on the west side of the state (typically, the wet

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[16] Todd Myers, Washington Policy Center, *State of Salmon in Washington 2022: struggling populations, sea lions, and legislative shortfalls*, (Mar. 1, 2023), https://www.washingtonpolicy.org/publications/detail/state-of-salmon-in-washington-2022-struggling-populations-sea-lions-and-legislative-shortfalls.

[17] *2013 State of Knowledge Report*, *supra*, n.12 at ES-4, 6-6, 6-11, 6-12.

[18] May, C. et al., U.S. Global Change Research Program, *Northwest in Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment*, ch. 24 (2018). 10.7930/NCA4.2018.CH24 (hereinafter "Fourth National Climate Assessment")

[19] *Id.*, Inflation Calculator, US Inflation Calculator, https://www.usinflationcalculator.com/ (last visited June 5, 2024).

[20] Fourth National Climate Assessment, *supra*, n.23.

[21] Washington State Recreation and Conservation Office Governor's Salmon Recovery Office, *Saving Salmon for the Future*, at 17 (2018), https://app.leg.wa.gov/ReportsToTheLegislature/Home/GetPDF?fileName=SOS-ExecSumm-2018-FINAL%20web_14054b82-91a9-47f8-aebc-d4b4151bba20.pdf.

[22] *Id.*

side).[23] Impacts to state-owned forest lands could also lead to a decrease in state revenues.[24] Wildfire also causes significant damage in wildland-urban interface areas, threatening public safety and private property.

10. Climate change will likely have significant impacts on Washington's infrastructure, including state-owned facilities. Increased precipitation and more intense winter storms could lead to increased mudslides, localized flooding, and wind damage.[25] Rising sea levels and higher storm surges may erode and weaken roads and bridges, damage stormwater drainage and tide gates, and corrode state-owned coastal facilities.[26] Higher temperatures and drought pose threats of fire damage, buckling of roads and rail tracks, and loss of roadside vegetation, worsening erosion and landslides.[27] Projects involving any of these types of infrastructure require SEPA review and climate mitigation and resilience analyses.

11. Washington strongly supports the Final Rule. The Final Rule aligns closely with Washington's laws and regulations that require analysis of climate change and greenhouse gases for projects. Maintaining alignment between state and federal approaches to analyzing climate change and greenhouses gases maximizes our collective capacity to mitigate and adapt to climate change. It also slows the acceleration of climate impacts, limiting damage to environmental resources under both state and federal jurisdiction. Thus, Washington supports the Final Rule and objects to its potential vacatur.

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[23] *Id* at 7-4.

[24] Washington Department of Natural Resources, *Safeguarding Our Lands, Waters, and Communities: DNR's Plan for Climate Resilience* (Feb. 2020), https://www.dnr.wa.gov/publications/em_climateresilienceplan_feb2020.pdf

[25] Washington State Department of Transportation, *Guidance for Considering Impacts of Climate Change in WSDOT Plans*, at 4 (2017), https://wsdot.wa.gov/sites/default/files/2021-10/Guidance-Doc-Considering-Climate-Change-In-WSDOT-Plans.pdf.

[26] *Id.*

[27] *Id.*

12. Vacatur of CEQ's Final Rule would worsen climate change and cause environmental damage that would harm the Program's ability to carry out its mission. If NEPA reviews around the country fail to analyze climate change and greenhouse gas emissions, federal agencies will lack the information to develop mitigation and projects subject to the law will include fewer climate change mitigation measures, worsening and accelerating the impacts of climate change in Washington. Those impacts, including sea level rise, increased flooding, and severe heat and drought, would cause significant environmental destruction in Washington, harming the Agency's ability to protect and restore coastal, floodplain, and shoreline areas in accordance with its mission.

13. Vacatur of the Final Rule and the worsened climate change impacts that result would also harm the Agency's ability to administer and implement the State Environmental Policy Act ("SEPA"). If repeal occurs and climate change impacts worsen, the Agency will need to dedicate even more time, money, and staff to analyzing climate change impacts and enhancing, climate mitigation and resilience strategies in SEPA reviews. With SEPA staff and budget already limited, increased strain from a repeal of the Final Rule would harm the Agency's ability to carry out SEPA functions. Worsened climate impacts could also limit the effectiveness of climate change mitigation measures the Agency imposes or recommends under SEPA, harming the Agency's ability to prevent significant adverse environmental impacts throughout the state.

14. Finally, vacatur of the Final Rule would harm the Agency's ability to work with federal agencies on joint NEPA/SEPA projects. The Program frequently works on actions with federal agencies that are subject to NEPA and SEPA, including dams, reservoirs, and projects affecting coastal and surface waters. If NEPA reviews no longer assess climate change and greenhouse gases, the state's approach to analyzing the scope of environmental impacts will be fundamentally inconsistent with the federal approach. This will lead to disagreement and inefficiency in joint NEPA/SEPA processes, as the

state and federal agencies will have different standards governing what potential environmental impacts require analysis. Thus, a repeal of the Final Rule would harm the Agency by limiting the effectiveness of joint NEPA/SEPA processes and adding additional cost to the environmental review process.

15. Vacatur of CEQ's Final Rule will result in increased risk of these impacts to Washington.

I state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Executed on August 29, 2024 in Olympia, WA.

s/ Joenne McGerr
Joenne McGerr